



# MONTHLY CASE LAW UPDATE

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## CONSTITUTION

1) Gen. (R.) Parvez Musharraf vs. Nadeem Ahmed (Advocate)

(PLD 2014 SC 585)

*Tassaduq Hussain Jillani, C.J., Nasir-ul-Mulk, Jawwad S. Khawaja, Anwar Zaheer Jamali, Khilji Arif Hussain, Mian Saqib Nisar, Asif Saeed Khan Khosa, Sarmad Jalal Osmany, Amir Hani Muslim, Ijaz Ahmed Chaudhry, Gulzar Ahmed. Sh. Azmat Saeed, Iqbal Hameedur Rahman and Mushir Alam, JJ.*

Limitation would run even against a void order and would be computed from the date of knowledge.

### High treason:

Discretion to direct trial for High treason lay with the Executive.

2) Independent Media Corporation etc. vs. Federation of Pakistan

(PLD 2014 S.C. 657)

*Jawwad S. Khawaja and Gulzar Ahmed, JJ.*

انگریزی پاکستان کے عوام الناس یعنی قوم کی سمجھ سے بالاتر ہے۔ یہ قدرتی امر بھی ہے کیونکہ یہ زبان پاکستان کی نہیں ہے۔ لیکن اس سے بھی زیادہ اہمیت اس بات کی ہے کہ بہت سے انگریزی زبان پر عبور رکھنے والے لوگ اس زبان کو پسند کرتے ہیں اور اپنے لئے اس کی سوجھ بوجھ اور فہم کو باعث افتخار سمجھتے ہیں تاہم اس کو بھی انگریزی زبان پر وہ مطلوبہ دسترس اور بہارت نہیں ملتی ہوئی چاہیے۔ خاص طور پر دیکھنے میں آیا ہے کہ چونکہ آئین اور بیشتر قوانین انگریزی زبان میں تحریر ہیں، چند نام نهاد ماہرین اور پنڈت آئینی اور قانونی شنقات کا مکمل طور پر ادا کرنے میں سکتے ہیں، نتیجتاً عوام الناس تک ان کے حقوق کے بارے میں صحیح معلومات نہیں پہنچ پاتیں۔

عدالتوں کی اور ابلاغ عامہ کی ذمہ داری ہے کہ وہ سلیس اردو میں اور مقامی زبانوں میں عدالتی فیصلوں کو عوام الناس

تک پہنچائیں اور ایسا کرتے ہوئے آئین کی شق نمبر 251 اور 28 کی روح کی پاسداری کریں۔

- 3) (Suo Motu actions regarding suicide bomb attack of 22-9-2013 on the Church in Peshawar and regarding threats being given to Kalash tribe and Ismailies in Chitral)

(PLD 2014 S.C 699)

*Tassaduq Hussain Jillani, C.J. Sh. Azmat Saeed and Mushir Alam, JJ.*

The principles in relation to interpretation of Art.20 of the Constitution have been discussed and elaborated.

- 4) D.G. A.N.F. Rawalpindi vs. Munawar Hussain Manj

(2014 SCMR 1334)

*Asif Saeed Khan Khosa, Gulzar Ahmed and Dost Muhammad Khan, JJ.*

When Judges of the Supreme Court hearing a matter signed the short order, then for all intents and purposes it had to be treated as a final disposition, and absence of any detailed judgment did not require rehearing of the same matter.

- 5) Lt. Gen. (Retd.) Jamshaid Gulzar vs. Federation of Pakistan

(2014 SCMR 1504)

*Nasir-ul-Mulk, Anwar Zaheer Jamali and Iqbal Hameedur Rehman, JJ.*

Where the legislature had given an enactment retrospective effect with clear intendment spelt out from its language, then no protection to the alleged vested rights of a party could be offered contrary to it.

- 6) Muhammad Aslam Awan, Advocate vs. Federation of Pakistan etc.

(2014 SCMR 1289)

*Tassaduq Hussain Jillani, C.J., Nasir-ul-Mulk, Anwar Zaheer Jamali, Asif Saeed Khan Khosa and Ejaz Afzal Khan, JJ.*

August Supreme Court has laid down the principles regarding Seniority inter se the Judges of the High Courts.

- 7) Fiaz Ahmad vs. D.C.O. etc.

(PLJ 2014 Lahore 1130)

*Muhammad Farrukh Irfan Khan, J.*

Notification regarding imposition of condition of possessing diploma of M.S Office from recognized institution of I.T. was not publicized by department in any newspaper and remained an internal document.

After expiry of last date of receipt of application, there was no justification for department to deviate from conditions as laid down in advertisement and recruitment policy supra. Petition allowed.

## CRIMINAL LAWS

- 8) Muhammad Ali vs. Addl. I.G., Fsd.

(PLD 2014 S.C. 753)

*Mian Saqib Nisar, Asif Saeed Khan Khosa and Sh. Azmat Saeed, JJ.*

Order passed by J.O.P u/s.22-A(6), Cr.P.C. impugned before the High Court u/s.561-A, Cr.P.C.

**Held:** Jurisdiction of High Court under S. 561-A, Cr.P.C. could be exercised only in respect of orders or proceedings of a court. Provisions of S.561-A, Cr.P.C. had no application vis-à-vis executive or administrative orders or proceedings of any non-judicial forum or authority.

- 9) Qari Muhammad Rafique vs. A.I.G.

(2014 SCMR 1499)

*Anwar Zaheer Jamali, Asif Saeed Khan Khosa and Ijaz Ahmed Chaudhry, JJ.*

Investigation transferred at a stage when challan had already been submitted in court, charge had been framed and trial had commenced. Order for transfer of investigation at such a belated stage would not be sustainable in the eyes of law.

10) Muhammad Sajjad vs. The State

(2014 P.Cr.L.J 1733)

*Muhammad Anwaarul Haq, J.*

Vehicle without specific identification could not be allowed to ply on the roads as the same could not be stamped to be of a particular owner. Such vehicles were a serious security threat, which could be used in criminal activities including smuggling of narcotics and bomb blasts. High Court observed that allowing such vehicles to be given on superdari on the basis of duplicate registration books of stolen or destroyed vehicles should be discouraged.

11) Muhammad Qasim vs. The State

(PLD 2014 Lahore 555)

*Muhammad Anwaarul Haq, J.*

"Shajjah-i-Khafifah" was an injury caused to the victim without exposing his bone whereas "Shajjah-i-Mudihah" was an injury where bone of victim was exposed without causing fracture. Injuries not resulting into exposure of bone, could not be considered "shajjah-i-mudihah" falling under S.337-A(ii), P.P.C. All injuries described as bone deep, prima facie, fell within the purview of "shajjah-i-khafifah" under S.337-A(i), P.P.C.

## **CUSTOMS ACT**

12) Fazal Bari vs. Model Custom Collector, Quetta etc.

(2014 PTD 1847)

*Qazi Faez Isa, C.J. and Muhammad Ejaz Sawati, J.*

No concept of Rahdari existed either in Customs Act, 1969, or in Provincial Motor Vehicles Ordinance, 1965, and without payment of customs duty and other applicable taxes and without possessing a valid registration number no vehicle could be driven as the same was in contravention of the laws.

## **ELECTION LAWS**

13) Election Commission of Pakistan vs. Province of Punjab etc.

(PLD 2014 S.C. 668)

*Tassaduq Hussain Jillani, C.J., Khilji Arif Hussain and Sh. Azmat Saeed, JJ.*

Delimitation of constituencies of the Local Government was part of the process of organizing and holding elections honestly, justly and fairly which was the constitutional mandate of the Election Commission. The power to carry out such delimitation should vest with the Election Commission.

## **F.I.R.O. 2001**

14) Ghulam Dastgir Asif vs. United Bank Ltd.

(2014 CLD 1020)

*Mamoon Rashid Sheikh and Ch. Muhammad Younis, JJ.*

Though provisions of S.5 of Limitation Act, 1908, have not been made applicable to proceedings under Financial Institutions (Recovery of Finances) Ordinance, 2001, however, the same has not excluded applicability of S. 12 of Limitation Act, 1908. In absence of such exclusion, provisions of S.12 of Limitation Act, 1908, are applicable to proceedings under Financial Institutions (Recovery of Finances) Ordinance, 2001.

## **INCOME TAX ORDINANCE**

15) Amjad Qadoos vs. CHAIRMAN N.A.B.

(2014 SCMR 1567)

*Sarmad Jalal Osmany and Muhammad Ather Saeed, JJ.*

Wherever the officials of the income tax department or of any other agency did any act in their official capacity in furtherance of the

objectives of the legislation which gave them the power to do so, such acts should remain protected. Such protection, however, could only be extended to legitimate acts i.e. those done in good faith, bona fide and in the interest of the State and not to acts which were allegedly unlawful.

## ISLAMIC JURISPRUDENCE

16) Noor Uddin Khan Tareen vs. Government of Balochistan etc.

(PLD 2014 Balochistan 132)

*Qazi Faez Isa, C.J. and Muhammad Kamran Khan Mullahkhalil, J.*

Illegal encroachment upon and occupation of Government land for construction of a mosque. Forcefully building a mosque on another's land, including land held by Government or a statutory authority, was tantamount to devouring someone else's property and also a sin. Following are the principles of Shariah governing mosques:---

(i) To constitute a sharee masjid the following conditions must be fulfilled: firstly, the land must be given with consent, without fear, threat or coercion, secondly, the land must be given by the legal owner of the land who is capable to grant it, thirdly, it must be legally accepted, and, fourthly, the land must be separated from the land in which another has an interest therein, including one's own;

(ii) To forcefully build a mosque on another's land, including land held by a government or a statutory authority, is tantamount to devouring someone else's property and is a sin;

(iii) There is a distinction between a "sharri masjid (a mosque built in accordance with shariah)" and "jai musalla" (a place where people may simply pray), and a jai musalla does not constitute a mosque, and therefore can be demolished;

(iv) If the law requires the submission and seeking approval of building plans before building a mosque the same must be complied with;

(v) A 'mosque' that is built to cause dissension amongst Muslims is haram and cannot be categorized as a mosque and Muslims must not offer prayers therein;

(vi) If a mosque is built out of obstinacy or enmity or some other ulterior motive, it will not earn reward for the builder, and may also constitute a sin;

(vii) If a mosque is sincerely built for the sake of Almighty Allah and without a motive to earn name, fame and/or recognition one earns sawab (reward); and

(viii) In building mosques the best example is that of Prophet Muhammad, peace and blessing be upon him, who, despite being offered free land, purchased the land on which he built a mosque, which was open to all Muslims, men and women, old, young, every race and colour.

## LAND ACQUISITION

17) Land Acquisition Collector, Sargodha vs. Muhammad Sultan etc.

(PLD 2014 S.C. 696)

*Jawwad S. Khawaja, Iqbal Hameedur Rahman and Mushir Alam, JJ.*

In this case where the Acquiring Authority was proceeded against ex parte and had not led evidence in rebuttal to the testimony of landowners and their witnesses; it was held that the landowners could not be awarded an enhanced sum on such basis, as it was incumbent upon the landowners to prove their assertions.

## **NEGOTIABLE INSTRUMENTS.**

18) Sheikh Muhammad Shakeel vs. Sheikh Hafiz Muhammad Aslam

(2014 SCMR 1562)

*Nasir-ul-Mulk, Amir Hani Muslim and Ijaz Ahmed Chaudhry, JJ.*

Instrument which fulfilled all the conditions mentioned in S. 4 of the Negotiable Instruments Act, 1881 would be termed as a "promissory note" and such an instrument was not required to be attested in terms of Art. 17(2)(a) of Qanun-e-Shahadat, 1984.

Insufficiently stamped Promissory Note was neither invalid nor a void instrument, but it was only subject to disabilities mentioned in S. 35 of the Stamp Act, 1881. Deficiently stamped promissory note was not admissible in evidence nor it could be acted upon unless duly stamped. However in terms of S. 36 of Stamp Act, 1881 if a deficiently stamped instrument was once admitted in evidence and marked as an exhibit, it was not permissible for the Court of first instance, or in appeal or in revision to exclude such instrument from its consideration. Provisions of S. 36 of Stamp Act, 1881 were mandatory in nature and had overriding effect on S. 35 of the said Act imposing a complete bar to question the admissibility of a Promissory Note once it had been admitted and exhibited in evidence without any objection from the other side and included all such instruments which fell under proviso (a) to S.35 of the Stamp Act, 1881.

## **SERVICE LAWS**

19) Peer Mukarram-Ul-Haq vs. Federation of Pakistan etc.

(2014 S CMR 1457)

*Nasir-ul-Mulk, Sarmad Jalal Osmany and Amir Hani Muslim, JJ.*

Dismissal of civil servant from service attaining finality after judgment of Supreme Court. President ordering re-instatement of such civil servant on grounds of hardship under S. 23 of Civil Servants Act, 1973.

**Held:** Such order by the President (competent authority) offended Art. 190 of the Constitution, which mandated that all executive and judicial authorities shall act in aid of the Supreme Court

## **SALES TAX ACT**

20) Taj international (Pvt.) Ltd. vs. Federal Board of Revenue etc.

(2014 PTD 1807)

*Syed Mansoor Ali Shah and Mamoon Rashid Sheikh, JJ.*

Pre-trial steps including arrest and detention could not be given effect to unless the tax liability of the taxpayer was determined (first) in accordance with S. 11 of the Sales Tax Act, 1990. Such precondition of assessment of tax was the minimum constitutional requirement to ensure fair trial and due process under Arts. 4 & 10A of the Constitution.

## **SUPREME COURT OF UK**

21) British Broadcasting Corporation (Scotland) vs. A

(2014 SCMR 1393)

*Lady Hale, Deputy President, Lord Wilson, Lord Reed, Lord Hughes, Lord Hodge.*

General principles and exceptions in relation to principle of open justice and freedom of media and press to publish court proceedings have been discussed in detail, which may be summarised as under:-

- I. Justice was administered by the courts in public, and was therefore open to public scrutiny. This principle was an aspect of the rule of law in a democracy. Society depended on the courts to act as guardians of the rule of law. In a democracy, where the exercise of public authority depended on the consent of the people governed, the answer must lie in the openness of the courts to public scrutiny.

- II. Principle that courts should sit in public had important implications for the publishing of reports of court proceedings. It was by an application of the same principle that it had long been recognised that proceedings in open court may be reported in the press and by other methods of broadcasting in the media.
- III. Connection between the principle of open justice and the reporting of court proceedings was not merely functional. Since the rationale of the principle was that justice should be open to public scrutiny, and the media were the conduit through which most members of the public received information about court proceedings, it follows that the principle of open justice is inextricably linked to the freedom of the media to report on court proceedings.
- IV. It was for the courts to determine the ambit and requirements of principle of open justice, subject to any statutory provision. The courts therefore had an inherent jurisdiction to determine how the principle should be applied.
- V. Principle of open justice was fundamental to the dispensation of justice in a modern, democratic society, however, in rare cases, a court had an inherent power to receive evidence and argument in a hearing from which the public and the press were excluded. Such a course might only be taken (i) if it was strictly necessary to have a private hearing in order to achieve justice between the parties, and (ii) if the degree of privacy was kept to an absolute minimum. Examples of such cases, could be litigation where children were involved, where threatened breaches of privacy were being alleged, and where commercially valuable secret information was in issue.
- VI. Principle of open justice could be limited where it was necessary to protect confidential information or to prevent the frustration of the judicial process.
- VII. Freedom of expression may conflict with other important values, including the rights to life and to bodily security, the integrity of legal proceedings, the rights of litigants and accused persons, and the right to respect for private life. Where there was a conflict between the right of the media to report legal proceedings and the rights of litigants or others under a guarantee which was itself qualified, a balance must be struck, so as to ensure that any restriction upon the rights of the media, on the one hand, or of the litigants or third parties, on the other hand, was proportionate in the circumstances.
- VIII. Where the conflict was between the media's rights and an unqualified right of some other party, such as the right to life and bodily security or the rights of litigants and accused persons, there could be no derogation from the latter. Care must nevertheless be taken to ensure that the extent of the interference with the media's rights was no greater than was necessary. The need for such care reflected the important role of the media in a democratic society in scrutinising the administration of justice generally, as well as their role as the conduit of information about particular proceedings which may be of public interest. Balance to be achieved, in such context, was therefore between on the one hand protection of public discussion of matters of legitimate interest in a democracy, and on the other protection of the integrity of particular court proceedings or of the administration of justice more generally.
- IX. Media did not have the right to publish information at the known potential cost of an individual being killed or maimed.
- X. Whether a departure from the principle of open justice was justified in any particular case would depend on the facts of that case. The court had to carry out a balancing exercise which would be fact-specific. Central to the court's evaluation would be the purpose of the open justice principle, the potential value of the information in question in advancing that purpose and, conversely, any risk of harm which its disclosure may cause to the maintenance of an effective judicial process or to the legitimate interests of others.
- XI. Where the interests of justice required some qualification of the principle of open justice, it may not be necessary to exclude the public or the press from the hearing: it may suffice that particular information was withheld.